

Angola: Regulations on HIV/AIDS, Employment, and Professional Training (Decree 43/03 of 4 July) (2003)

Adopted on 4 July 2003 and promulgated by the President of Angola on 20 April 2003. Its full name in Portuguese is *Regulamento sobre o HIV/SIDA, Emprego e Formação Profissional (Decreto nº43/03 de 4 Julho)*. Among other things, it expressly prohibits HIV testing in employment.

The infection by the Human Immunodeficiency Virus (HIV) and the development of the Acquired Immunodeficiency Syndrome (AIDS) constitute, in actual fact, one of the major health problems that society faces in respect of implementing legally protected social rights, namely the right to work, employment and professional training.

For this reason, we recognise the need to create regulation on HIV/AIDS, employment and professional training, in line with the recommendations by UNAIDS which establishes, defines and regulates the ways, the methods and behaviour to protect the employees, that must be observed by the employers in the workplace, by the centres of professional training, based on the respect for fundamental human rights and international decrees, namely, in ethical norms of health in the workplace, in professional training and in adoption of practices and attitudes of solidarity and respect towards the affected individuals.

In terms of the arrangements agreed to in section 112(d) and section 113, both sections from the Constitution, the government decrees the following

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Regulations on HIV/AIDS, employment and professional training

CHAPTER 1 - General considerations

Section 1: Purpose

The present regulation establishes compulsory rules for employers, employment professionals, and training institutes regarding the mechanisms for the protection of HIV positive citizens and those affected by HIV/AIDS in the workplace and professional training, as well as the promotion of preventive measures against the spread and dissemination of HIV/AIDS.

Section 2: Scope

The present regulation applies to State organs and institutions, central and local administration, public companies, mixed and private national, as well as foreign companies, cooperatives and also institutions of employment and professional training, irrespective of its size.

Section 3: Implementation

1. The implementation of the present regulation is secured by the organs of state that supersede public administration sectors and employment as well as public health.

2. It is specially the duty of the services linked to public health, in particular the *Programa Nacional De Luta Contra a SIDA* (National Programme for the Fight against AIDS), and the services of the General Inspection of Work and Employment

and Professional Training to create the necessary activities to promote the present regulation.

3. Through the appropriate mechanisms cooperation and participation of social partners and organisations interested in the implementation of approved programmes, can be established.

Section 4: Definitions

The definitions which afford a better understanding of this regulation are attached to this document and form an integral part thereof.

CHAPTER 2: Education, sensitization and prevention

Section 5: Programmes

1. The entities referred to in section 3(1), in collaboration with the syndicate associations and respective employers must establish education and sensitization programmes about HIV/AIDS incorporated to affect relatives close to the employees and trainees.

2. In the implementation of the above the following must be present

(a) prevention through education, information, sensitizing of sexually transmitted diseases (STD) and HIV/AIDS.

(b) promotion, distribution of condoms and counselling.

CHAPTER 3: Access to employment and professional training

Section 6: Access and control

1. It is not permitted under any circumstances to conduct an HIV test as a prerequisite for admission for employment, neither is the forced control of HIV/AIDS in the workplace, unless at the request of the candidate or employee, except for those cases where it is legally required.

2. Voluntary control of HIV/AIDS at the request of the employee must be conducted by properly qualified entities and credentialed by the national health services.

Section 7: Confidentiality

1. The employees, applicants, HIV/AIDS carriers are not obliged to disclose their status to the employers and those responsible for the institutions for employment and professional training or their representatives, except for those cases where it is legally required.

2. The information regarding the health status of the employee or trainees in relation to HIV/AIDS cannot be revealed without their consent, except in those cases where it is legally required.

CHAPTER 4: Labour and training situation

Section 8: Labour and training situation

1. HIV status may not be a factor to take into account in decisions related to the dismissal and the promotion of employees or trainees; depending on their situation or professional training it shall be based on equal opportunity as defined by law to exercise a job or certain level of professional training.

2. The transfer of a HIV positive person from one position to another or from one centre of professional training to another shall be based on the need to best accommodate his or her physical condition based on his or her health status.

3. HIV status may not be a factor when considering professional training, techno-professional surpassing and qualifying of the citizen.

4. The employees and trainees infected with HIV shall maintain the labour or training tie for as long as they show that they are apt to carry the conditions embodied in the contract.

5. In the event of the clinical status aggravating and it being necessary to suspend the contract, the employers may not alter the remuneration terms for as long as there is still a tie with the institution, company or centre for professional training, and may only alter the rendering of services when death is imminent and duly attested to by competent medical entity.

Section 9: Security and health at the workplace

1. The employees and trainees infected with HIV/AIDS have the right to access to medical treatment without discrimination, on the terms and conditions established by the law relating to licenses for diseases.

2. Whenever medical conditions do not allow employees and trainees to continue exercising their normal activities or from progressing in their professional training, they must be offered alternative work or training, without jeopardizing the benefits that flow from the contract.

Section 10: Social security

An HIV positive employee shall benefit from the same socio-economic rights guaranteed in the general laws for employees infected with tuberculosis, leprosy, stomach infections, cancer and severe mental illnesses.

Section 11: Professional benefits

1. The institutions for professional training and the associations that are willing must ensure that the employment benefits to the infected employees and trainees are not prejudiced, by giving them the necessary assistance.

2. The medical projects from companies and public institutions must not be discriminatory in relation to HIV/AIDS and must promote legal benefits to all employees and trainees irrespective of their clinical status.

Section 12: Counselling

Employers in collaboration with syndicate associations shall create methods of counselling that allow every employee to be aware of their rights, guarantees and other benefits, such as, medical assistance, life insurance and the many forms of social security.

CHAPTER 5: Protection and guarantees

Section 13: Professional risks

Employers shall take preventive measures that promote the reduction of the risk of infection with HIV in the course of employment and provide the necessary information regarding the danger that results from negligence or failure to comply with the norms for the prevention of HIV/AIDS.

Section 14: Compensation

1. The employees infected with HIV during the course of their employment or during their professional training have the right to compensation or reparation in terms of the law.

2. Whenever it becomes inevitably necessary to transfer employees or trainees infected with HIV or suffering from AIDS, the employer has the duty to facilitate the process of relocating them with their families and persons under their care.

3. The employer shall secure the means of minimising the risk of infection, including access to information and condoms for employees whose occupation requires frequent travelling.

Section 15: Protection against *iniuria*

1. The HIV positive employee must be protected against stigmatisation and discrimination from work colleagues, employers or customers.
2. Stigmatisation and discrimination of employees infected with HIV or suffering from AIDS, constitutes a severe violation of the duty to respect established in sections 43 and 46 of the *Lei Geral do Trabalho* (General Labour Law).
3. The employers and institutions for professional training shall, in terms of the law, institute disciplinary sanctions on the perpetrators of the conducts referred to above.

Section 16: Violations

1. A violation of the present regulation by the employers and the representatives of the institutions for professional training is punishable by a fine from two to five times the minimum monthly salary offered by the company.
2. In cases where *dolus*, coercion or other fraudulent means are present, the fine may be aggravated up to 10 times the fine provided above without affecting the criminal proceedings.

Section 17: Application of the fines

1. The supervision, control and application of fines in terms of the present regulation are the responsibility of the *Inspeccao Geral do Trabalho* (General Labour Inspection).
2. The funds produced from the fines for the transgression of the norms established by the present regulation will serve to aid HIV/AIDS policy coordinated by the Extended Programme for the Fight Against AIDS, which shall be distributed in the following proportions:
 - (a) 50 per cent to the Central Government budget (aimed at *Programa Nacional de Luta contra SIDA*);
 - (b) 20 per cent to the Health sector;
 - (c) 20 per cent to Social Security;
 - (d) 10 per cent to the General Labour Inspection.

Annexure

To which section 4 of the preceding regulation refers to (Definitions)

1. Regulation on HIV/AIDS, employment and professional training: a combination of norms relating to the protection of HIV-positive citizens in the workplace or professional training, health education directed at HIV-positive individuals with the objective of informing them about sexual practices aimed at reducing the risk of spreading HIV/AIDS in society.
2. Employment: the abstract social status conferred upon a national or foreign citizen for his or her tie to productive work and remuneration by another in public or private institutions linked to economic and social development.
3. Professional Training: the process through which youths and adults acquire and develop knowledge and general and specific professional skills, attitudes and practices directly linked to the exercise of a profession, which complements scholarly education in the field of permanent education and is aimed at integrating the individual in useful social life.
4. STD: sexually transmitted diseases.

5. Employee: any resident national or foreign individual person who voluntarily offers his or her professional activity to the service of an employer under his organisation or direction in return for remuneration.
6. Intern: any resident national or foreign individual person who is voluntarily obligatorily tied to a process of internship in a company, organ or institution for professional training.
7. Learner: every national or foreign citizen of active age who is legally tied to a process of methodical professional training, who has the goal of securing or developing their individual or collective ability and acquiring the necessary skills for the execution of a qualified profession, after having been conferred a grade of scholar equivalence which entails:
 - (a) Specific technical professional training which is observed by companies and institutions for employment and professional training recognised by the *Instituto Nacional de Emprego e Formacao Profissional* (INEFOP).
 - (b) General training observed by official businesses belonging to companies or other public and private institutions.
8. Trainee: every national or foreign citizen of active age who is legally tied to a process of acquiring knowledge and general and specific professional skills which are directly linked to the exercise of a profession and aimed at best socially integrating the individual.
9. Workplace: the place where the employee regularly and permanently works.